

REMARKSA. Request for Reconsideration

Applicants have carefully considered the matters raised by the Examiner in the outstanding Office Action but remain of the position that patentable subject matter is present. Applicants respectfully request reconsideration of the Examiner's position based on the following remarks.

B. The Invention

The present invention includes a method for increasing the sugar content of grapes by administering copper salts of caprylic amino acids to grape crops. Applicants have surprisingly discovered that treating the grapes crops as they are on the vine increases the sugar content of the grapes.

C. Status of the Claims

Claims 15-17, 19 and 20 are presented in this case for further prosecution. No claim amendments have been made at this time.

Claims 15-17 and 19 have been allowed over the cited art (note the typographical error in the Office Action Summary). Claim 16 is the only claim that stands rejected.

D. Rejections under 35 USC 102(b)

Claim 16 had been rejected as being anticipated by DeMil (US 4,797,151). DeMil had been cited to teach treating grapes when they are on the vine with the compound of the invention.

In response to the prior Office Actions, Applicants had primarily argued that the treatment period of DeMil differs from the invention in that DeMil teaches treating grapes between floral induction and the end of inflorescence, while the invention claims treating grapes after the period of DeMil when the grapes are on the vine.

In reply to Applicants' arguments, the Examiner had taken the position that a) the Application provides no support for treating the grapes when they are on the vine, and b) treating the grapes when they are on the vine is indistinguishable from treating the grapes during the period of DeMil. This position was also taken in the previous two Office Actions dated April 27, 2004 and July 15, 2003.

1. The application does support treating the grapes when they are on the vine

The specification begins by specifically explaining that the compounds of the invention do not guarantee favorable results without considering parameters such as the moment of application of the compounds based on the life cycle of the plant (page 1, lines 10-16). This language relating to the "moment of application" in the Summary of the Invention clearly establishes that the Inventors have drawn lines to differentiate different stages in the life of a plant.

It is well known that increasing the numeric output of grapes decreases the sugar content of the grapes. In addition, it is well known that treating grapes during flowering increases the numeric output and decreases the sugar content. Claim 16 can therefore have only one reasonable interpretation with regard to increasing sugar content, namely, the grapes must be treated after flowering to achieve this purpose.

Respectfully, Applicants assert that the Examiner cannot continue to maintain the position that claim 16 finds no support in the Application in light of the above-explained knowledge of those familiar with the art.

2. The period of time when the grapes are on the vine is distinguishable from the period of time between floral induction and the end of inflorescence

DeMil explains that the numeric output of grapes is enhanced by treating the grapes during the period between floral induction and the end of inflorescence (col. 1, lines 41-47). This period covers the time when flowers begin to form until the time when the flowers have completely formed.

As discussed above, those skilled in the art understand that treating grapes during the period of DeMil increases the numeric output of the grapes thereby consequently decreasing the sugar content. In fact, DeMil acknowledges the increased floral fertility (col. 1, lines 41-42). However, the Inventors have discovered that treating the grapes after the period of DeMil increases sugar content.

The treatment period of DeMil and the treatment period of the present invention therefore do not overlap based on the different results. On one hand, treating during the period of DeMil increases the numeric output of grapes and decreases the sugar content. On the other hand, treating during the period of the invention does not affect the

numeric output of the grapes but does increase the sugar content.

Applicants respectfully submit that the treatment period of the invention is distinguishable from the treatment period of DeMil, since the results obtained by DeMil are directly opposite to the results obtained by the present invention. Reconsideration and removal of the rejection is requested.

E. Extension of Time

The 4-month period for response was set to expire on Monday, February 21, 2005. Monday, February 21, 2005 was a Federal holiday and the 4-month period for response was thereby extended until Tuesday, February 22, 2005. This response is therefore being filed within the 4-month period. A one-month extension of time is hereby requested and PTO Form 2038 is enclosed for the appropriate fee.


F. Conclusion

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance and such action is respectfully requested. Should any further fees be necessary in order to maintain this Application in

pending condition, appropriate requests are hereby made and
authorization is given to debit Account # 02-2275.

Respectfully submitted,

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